connect their existing or planned loop facilities." SBC Ex. 1.0 at 19. SBC also purports that the subject information was not collected for this litigation, but was already gathered by GR and generally available to industry customers. Opposition at 10-11. Certain CLECs do not refute these assertions. Accordingly, SBC has demonstrated that the subject information is commonly used by knowledgeable parties for the particular purpose involved here.

Second, SBC utilizes GR information for the purpose of establishing "the location of competing carriers' fiber equipment, the buildings served by such equipment, the identity of the carrier providing service, and the bandwidth capacity of any identified ring or fiber optic equipment system in the building." SBC Ex. 2.0 at 18. In addition to the supporting assertions described in the preceding paragraph, SBC states that GR has a database "with over 80,000 Fiber 'Lit' buildings throughout the U.S. (along with the identity of each service provider that has lit equipment in these buildings)." *Id.* Also, SBC avers that GR has access to Telcordia's CLLI code library and the CLONES equipment code data base, which SBC says are "used throughout the industry." *Id.*, at 19. Certain CLECs do not refute these claims.

It is important to note that GR's information is used only for the purpose of locating fiber terminating equipment. The inference that the presence of such equipment demonstrates the presence of high capacity loops, SBC Ex. 2.0, at 20, is SBC's, not GR's. SBC has demonstrated that the subject information is commonly used by knowledgeable parties for the particular purpose articulated here.

GeoTel ("GT")

First, GT, like GR, is used as a source for the metropolitan fiber transport facilities map at SBC Ex. 1.0, Att. 3. SBC states that GT is a consultant to the telecommunications industry that collects "information on fiber facilities, including fiber transport routes." SBC Ex. 2.0 at 34. According to SBC, GT derives its data from fiber owners, public records and direct investigation. *Id.* SBC presents downloaded material from GT's website which claims SBC, AT&T, Verizon and Qwest as GT clients. Opposition, Ex. 3. As with GR, SBC again maintains that it procured previously gathered data from GT on an "off-the shelf" basis. Opposition at 10-11. Certain CLECs do not refute the foregoing averments. SBC has demonstrated that the subject information is commonly used by knowledgeable parties for the particular purpose involved here.

Second, SBC employs GT data in several attachments to SBC Ex. 2.0, for the purpose of depicting portions of fiber networks in downtown Chicago. The same unrefuted SBC assertions described in the preceding paragraph are applicable here. SBC has demonstrated that the subject information is commonly used by knowledgeable parties for the particular purpose involved in this instance.

Dun & Bradstreet ("D&B")

SBC obtained D&B information for the purpose of identifying business and government locations, and eliminating residential locations, in downtown Chicago. SBC describes D&B as a "world leader in obtaining, maintaining, and analyzing data about business and government, for use in credit, marketing, and purchasing decisions worldwide. Its databases include more than 64 million businesses worldwide (including 13 million in the United States)." SBC Ex. 2.0 at 35. Certain CLECs do not refute the foregoing assertions. SBC has demonstrated that the subject information is commonly used by knowledgeable parties for the particular purpose involved in this instance.

TNS Telecoms ("TNS")

SBC uses data and modeling provided by TNS for the purpose of estimating the annual telecommunications "spend" at locations identified by D&B. SBC Ex. 2.0 at 35-36. SBC describes TNS as "the world's largest provider of telecommunications market information...[whose] clients include the major worldwide providers of telecommunications services." *Id.*, at 36. According to SBC, TNS conducts "random samples of businesses" nationwide "to determine how much they spend each year." *Id.* That data is processed through a TNS model that estimates telecommunications spending by businesses "based on size, location, industry, and other factors. *Id.* TNS performs quarterly surveys to "verify" its estimates. *Id.* TNS has a business alliance with D&B and applies its modeling to the firms in the D&B database. *Id.*, Att. 22. SBC states that it obtained previously gathered TNS information on an off-the-shelf basis. Opposition at 8.

Unlike the information provided by GR, GT and D&B, the TNS information does not simply purport to locate something (e.g., fiber) or identify it (as a non-residence). Rather, TNS information is the product of applying a model to sample data to approximate what an enterprise with certain characteristics would likely spend on telecommunications. In short, TNS *estimates* spending and, for the most part, SBC employs it for that purpose (although in her answer to question 61 in SBC Ex. 2.0, Ms. Sparks implicitly treats TNS information as a quantification, rather than an estimate).

The issue, then, is whether reasonably prudent persons in commerce and government (and, particularly, in telecommunications) commonly use the TNS information for the purpose of estimating telecommunications spending by businesses and government. Given the size of TNS's operation, its relationship with D&B and the fact that businesses nationwide apparently cooperate with its data collection, SBC has demonstrated that the subject information is commonly used by knowledgeable parties for the particular purpose involved in this instance. Certain CLECs offer nothing to refute this conclusion. Nor do they

critique – in testimony filed prior to the Motion, or in the Motion itself - the detailed description of the TNS modeling process (the model itself is not provided) contained at SBC Ex. 2.0, Att. 23.

In sum, all of the evidence subject to the Motion is "of a type commonly relied on by reasonably prudent persons in the conduct of their affairs," within the meaning of Section 200.610(b), and may be admitted to the record irrespective of its status as hearsay. The ALJ strongly emphasizes, however, that the sole purpose of this Ruling is to determine the *admissibility* of the challenged evidence. Nothing in this Ruling is intended to state or imply that the subject evidence is (or is not) dispositive on any issue in this proceeding, or that such evidence does (or does not) establish a *prima facie* case with respect to any issue in this proceeding.

# Attachment B
# Exhibit 10

# REDACTED FOR PUBLIC INSPECTION

# Attachment C

# REDACTED FOR PUBLIC INSPECTION

# Attachment D
# Keown Declaration

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Unbundled Access to Network Elements | ) | WC Docket No. 04-313 |
| | ) | |
| | ) | |
| Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers | ) | CC Docket No. 01-338 |
| | ) | |

# DECLARATION OF JAMES E. KEOWN ON BEHALF OF SBC COMMUNICATIONS INC.

## Introduction

1. My name is James E. Keown. I am an Executive Director in SBC's Broadband Services/Outside Plant organization. My responsibilities include managing the deployment of NGDLC and other electronics to provide DSL in SBC's 13 state footprint. I also am responsible for managing the capital investment review process to ensure that capital is utilized appropriately and that investment guidelines are followed.

2. In my 27 year tenure with SBC, I have held a variety of positions, including, but not limited to, positions in organizations responsible for Network Maintenance, Maintenance Engineering, Central Office Equipment Engineering, OSP staff support and Network Reliability. I hold a Bachelor's Degree in Electrical Engineering.

3. The purpose of my declaration is to respond to claims by AT&T that CLECs are impaired without unbundled access to high capacity loop and transport facilities because it is uneconomic to deploy fiber transmission facilities except in the narrow circumstance where a CLEC already has significant committed demand for high capacity services at a

particular commercial location, and, even then, the CLEC could not economically deploy additional facilities unless the CLEC had an access point to its existing fiber ring "*immediately outside the front door*" of that location.[1] As discussed below, AT&T has vastly overstated the economic and operational impediments to deploying fiber facilities. Indeed, if the impediments to deployment were as significant as AT&T claims, CLECs would not have deployed the hundreds of metropolitan fiber networks and hundreds of thousands of route miles of fiber that they have. Nor would they be continuing to add to those facilities and to connect them to thousands of commercial buildings as they have.

**AT&T's Claims**

4. AT&T contends that, due to operational and economic impediments, a CLEC cannot economically deploy a loop to serve a particular location unless it has committed demand for at least two DS3s of capacity at a location that is no more than approximately 88 feet from an access point on the CLECs' already existing metro fiber ring, which, AT&T claims, is exceedingly unlikely because splice points on competitive networks typically are 2,000 feet apart.[2] In particular, AT&T claims that, in the vast majority of cases, a CLEC that seeks to add a customer to its fiber network must extend a fiber lateral to the location in an underground conduit, which is the most expensive aspect of outside plant

[1] AT&T Comments at 36-37 (emphasis in original) (citing Declaration of Messrs. D'Apolito and Stanley) (D'Apolito Declaration). Other CLECs make similar claims of economic and operational impediments to loop deployment, but do not provide the same level of specific details in support of their claims. *See* Sprint Comments at 43; Wiggers Decl. (on behalf of Advanced Telecom Inc.) paras. 19-24 ; Duke Decl. (on behalf of KMC Telecom) para. 9; Tirado Decl. (on behalf of XO) para. 17; Falvey Decl. (on behalf of Xspedius) para. 21; and Jackson Decl. (on behalf of TDS Metrocom) para. 11. Consequently, while I focus here on the specifics of AT&T's claims and business case, my critique of AT&T's claims apply equally to other CLECs' claims.

[2] AT&T Comments, citing D'Apolito Dec. ¶¶ 21-22; Fea-Giovannuci Dec. ¶23.

cost.[3] AT&T asserts that loop deployment also requires the addition of optical terminal equipment at both ends of a new fiber connection to light the fiber.[4] AT&T's business case, on which it relies to show that CLECs generally cannot deploy fiber economically, assumes that a CLEC will almost always have to incur the costs of trenching and placing new conduit, and adding new equipment at both ends to add a new customer location to its fiber network.[5]

5. AT&T further contends that ILECs do not face the same impediments when they add a new customer location to their fiber networks. In particular, it asserts that ILECs almost always already have fiber connected to customers' premises, and, even in the "uncommon cases where the incumbent does not already serve a particular building with fiber, its ubiquitous fiber network generally has accessible fiber located very close to the customer's building."[6] AT&T further claims that because "in most cases, the incumbent is *already* serving [a] location with its own fiber," the incumbent "only need[s] to augment its existing terminal multiplexers by inserting plug-in cards."[7] And it maintains that, unlike ILECs, CLECs often are unable to secure rights of way from municipalities or building access from landlords.[8] AT&T asserts that, as a consequence, ILECs can self-provide facilities at costs far lower than their rivals.

6. AT&T makes similar claims with respect to transport. In particular, it claims that it economically can deploy interoffice transmission facilities only where it has "enormous capacity [at least 12 DS3s worth of demand] and the transmission segments are extremely

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[3] AT&T Comments at 34, citing D'Apolito Dec. ¶ 16.
[4] AT&T Comments at 34-35, citing D'Apolito Dec. ¶ 15.
[5] *Id.*
[6] *Id.* at 40.
[7] *Id.*
[8] *Id.* at 19.

short."[9] But, according to AT&T, its ability to deploy transport links are "few and far between" because in 70 percent of the ILEC wire centers serving AT&T's customers, "AT&T does not have enough traffic to fill even *one* DS3 to reasonable levels."[10] AT&T claims that, as a consequence, it has "already built transport facilities (virtually all entrance facilities) to almost every ILEC wire center that could economically support self-deployed facilities construction."[11] AT&T thus would have the Commission believe that no further construction of CLEC transport facilities is possible.

**AT&T's Business Case Significantly Overstates the Cost of Deploying Fiber**

7. AT&T's claims regarding purported economic impediments to CLEC fiber deployment are not credible. AT&T wildly inflates the cost of deploying fiber by making unrealistic assumptions. Among other things, AT&T unrealistically and improperly assumes that CLECs virtually always will have to trench and lay new conduit in order to connect fiber to a new customer's premises, and will have to add new equipment at both ends of any new fiber loop. Unless AT&T is operating inefficiently, which does not constitute impairment, these assumptions are incorrect.

8. SBC agrees with AT&T that trenching and laying new conduit is the most expensive aspect of outside plant costs. But, it is not true that CLECs have to trench and lay conduit for each new customer added to their networks because the nearest access point is up to two thousand feet away, as AT&T supposes. Indeed, in most cases, trenching and adding new conduit is entirely unnecessary.

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[9] *Id.* at 48.
[10] *Id.*, *see also* Fea-Giovannuci Decl. at ¶ 69.

[11] AT&T Comments at 48.

9. As SBC demonstrated in its comments, CLECs already have deployed fiber rings throughout most major metropolitan areas, with an average of 19 networks in the top 50 MSAs. AT&T itself has claimed that it has deployed metropolitan fiber networks in at least 90 cities, making up about 70 percent of the local business marketplace.[12] With those metropolitan fiber rings in place, it is a relatively simple and inexpensive matter for a CLEC to add a new fiber lateral to connect to a new customer's premises without having to trench and lay thousands of feet of conduit as AT&T claims. The reason is, when a CLEC receives a request for high capacity services from a customer whose premises are not yet connected to the CLEC's fiber network, the CLEC can run a fiber "drop" from the nearest access point on its network through existing conduit to the customer's premises, which generally are in close proximity to the CLEC's fiber network (even if they are not near to the closest fiber splice point).[13] This can be accomplished by pulling fiber through spare ducts, which any efficient carrier would deploy when it trenches and lays conduit. Indeed, that is precisely what SBC does when, as is often the case, it receives a request for high capacity services from customers not yet connected to its fiber network.[14]

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[12] *See* Opposition of SBC Communications Inc. to AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access services, RM No. 10593, at 14 (filed Dec. 2, 2002), citing David Dorman, President, AT&T, Presentation at the Goldman Sachs Communacopia Conference (Oct. 2, 2002).

[13] As SBC's fiber maps attached to its reply comments make clear, tens of thousands of commercial buildings are within 300 feet of most CLECs' existing fiber networks.

[14] As discussed below, SBC's fiber network is by no means ubiquitous, nor does it connect to the "vast majority" of commercial buildings as AT&T claims.

10. Even if a CLEC does not have spare duct space in its existing conduit, it can lease conduit space from the incumbent LEC at extremely low rates. The CLEC's interconnection agreements with SBC contain terms and conditions that allow them to access SBC's poles, conduits, ducts and rights of way at very low rates. For example, the average price (across SBC's 13-state territory) to access SBC's conduit is $0.54 per-duct foot per-year. In Connecticut, CLECs can lease duct space for as low as $0.08 per-duct foot per-year.

11. CLECs are availing themselves of the option of leasing ILEC conduit in huge numbers in SBC's territory. CLECs are leasing over 18 million duct feet across SBC's territory. CLECs can lease multiple inner ducts in SBC's duct structures.[15] Typically, there are multiple inner ducts in each duct hole (typically 3). And a carrier typically needs to use only one inner duct in order to pull fiber to serve a customer's premises, leaving spare inner ducts for future needs. Consequently, leasing ILEC conduit and duct space provides most, if not all, CLECs a viable alternative to trenching and deploying conduit when they deploy new fiber transmission facilities, as the CLECs have shown by their own actions.

12. Accordingly, it is by no means necessary for a CLEC to trench and lay thousands of feet of new conduit back to the nearest access point on the CLEC's network to add a lateral to serve a new customer. AT&T's claims to the contrary are not only incorrect, they also cause AT&T to grossly exaggerate the costs of deploying new fiber.

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[15] A typical duct hole is 4 inches. Inner duct is typically one inch protective duct. Three inner ducts are normally pulled in each 4 inch duct hole. This allows multiple fiber providers to utilize a four inch duct.

13. AT&T's business case artificially inflates the cost of deploying new fiber loops in other ways as well. For example, in its business case analysis, AT&T assumes that, for every customer location that AT&T adds to its fiber network, AT&T would have to add an optical terminal not only at the customer's end, but also in its central office. That is an unrealistic assumption with today's technology. Newer SONET equipment allows each central office terminal to terminate multiple remote optical terminals located at multiple customer premises. Indeed, Messrs D'Apolito and Stanley acknowledge as much: "Where a terminal has already been deployed, such as where the customer location is already "on-net" a carrier may only need an additional plug-in card to add capacity to previously deployed add/drop multiplexer common equipment."[16] That is equally true for central office equipment. AT&T's assumption that CLECs must add new optical equipment at both the customers premises and the central office for each new fiber loop thus is not only wrong, it is inconsistent with the statements of its own experts, and serves only to grossly inflate AT&T's estimate of the cost of adding customers to AT&T's network.

**AT&T's Claims Regarding ILEC Advantages Are Similarly Exaggerated**

14. AT&T and other CLEC claims of impairment due to ILEC advantages are exaggerated. In particular, their claims that ILECs already have fiber connecting to "the vast majority" of commercial buildings in their serving areas also are incorrect. Like other ILECs, SBC has not deployed fiber ubiquitously throughout its network, nor does its fiber connect to all, or even the "vast majority" of commercial buildings throughout its service territory.

[16] D'Apolito Decl. ¶ 15, n. 4.

For example, only *** *** of commercial buildings in SBC's Southwest region with DS1 and above facilities are connected to SBC's fiber network, which is a small percentage of the commercial buildings in SBC's footprint.

15. Because SBC's fiber is by no means ubiquitous, SBC, like its competitors, generally must deploy additional facilities to connect new customers to its fiber network.[17] And, like its competitors, SBC must negotiate rights of way and access to buildings, as well as obtain municipal permits, to reach those new customers. Moreover, like its competitors, SBC must evaluate whether the prospective revenues from adding a new location to its network justifies the cost of deploying new fiber and equipment. In so doing, SBC does not simply evaluate the expected revenues from a single, committed customer; rather, it evaluates the entire projected demand from serving other customers at that location. But, unlike its competitors, in deciding where to place fiber, SBC cannot simply consider the economics of serving a particular building or area. Rather, it must consider its carrier of last resort and other regulatory obligations, which require it to build fiber distribution facilities in some areas where demand is not likely to justify the costs of deployment (at least not in the near term). Consequently, even if SBC had some advantages in connecting new customers and locations to its fiber network, which is by no means clear, it also confronts other disadvantages, which inflate its costs of deploying fiber vis-à-vis its competitors.

[17] When SBC connects a new location to its network, it pulls fiber from the nearest access point on its fiber network to the customer's building. However, contrary to what Messrs Fea and Giovannucci claim in their declaration (at ¶ 23), SBC does not have "more access points" to which to connect a fiber drop. Like its competitors, SBC uses standard network engineering guidelines to limit the number of splices in its fiber network. Under these guidelines, SBC places access points at approximately 2000 feet increments, which is comparable to the increments used by AT&T. In order to minimize construction costs, SBC then runs a fiber drop back through existing conduit (where available) to a point near the building, and adds conduit from that point to the nearest building access point.

**AT&T's Claims of Impairment With Respect to Transport Likewise Are Not Credible**

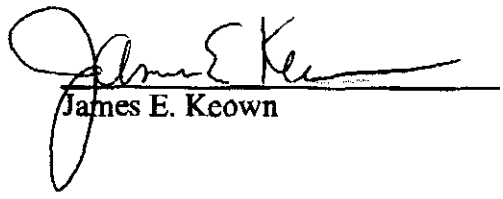
16. AT&T's claim of impairment with respect to unbundled transport is meritless. In support of this claim, AT&T asserts that AT&T currently does not have enough traffic to fill even a single DS3 in 70 percent of ILECs' central offices. Even if this claim were true today, which seems doubtful given the number of customers AT&T has won in SBC's territory, it is by no means clear that AT&T would continue to have such low demand for interoffice transport once it begins offering facilities-based service. Indeed, AT&T's relatively low demand for dedicated transport to serve its existing customers appears to result from its reliance on the UNE-P to serve its customers, which obviated any need for AT&T to deploy any facilities.

**Conclusion**

17. Despite AT&T's claims that it is uneconomic for a CLEC to place its own fiber, AT&T and other CLECs have placed hundreds of miles of fiber and lit tens of thousands of buildings. CLECs, not unlike ILECs, need to gain access to rights of way and buildings in order to place their facilities. However, the CLECs have the option of accessing SBC's poles, conduits, ducts and rights of way at very low rates (i.e., $0.54 per-duct foot per-year on average across SBC's territory). In fact, CLECs have leased over 18 million duct feet from SBC. Further, AT&T's assumption that CLECs must add new optical equipment at both the customers premises and the central office for each new fiber loop thus is not only wrong, it is inconsistent with the statements of its own experts, and serves only to grossly inflate AT&T's estimate of the cost of adding customers to AT&T's network.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 19, 2004.



James E. Keown

DOCKET NO. 04-313, 01-338 Attachment A

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